

# EXHIBIT EE

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN THE MATTER OF	)	
	)	
IN RE BAIR HUGGER FORCED AIR	)	
WARMING	)	
PRODUCTS LIABILITY LITIGATION	)	
	)	
Plaintiff,	)	
	)	PRETRIAL ORDER NO: 7
v.	)	Protective Order
	)	MDL No. 15-2666
3M COMPANY AND ARIZANT	)	(JNE/FLN)
HEALTHCARE INC.	)	
Defendant.	)	

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DEPOSITION OF PAUL MCGOVERN

VOLUME II

Thursday, January 5, 2017

AT: FAEGRE BAKER DANIELS LLP

Taken at:

7 Pilgrim Street

London EC4V 6LB

United Kingdom

Court Reporter:

Louise Pepper: Accredited Real-time Reporter

Videographer: Simon Addinsell

JOB NO. 117121

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2  
3 **A P P E A R A N C E S**

4 Appearing for the Plaintiff:

5 **MR. MICHAEL SACCHET**  
6 **CIRESI CONLIN**  
7 **225 South 6th Street**  
8 **Minneapolis, MN 55402**

9 **GENEVIEVE ZIMMERMAN**  
10 **MESHBESHER & SPENCE**  
11 **1616 Park Avenue**  
12 **Minneapolis, MN 55404**

13 Appearing for the Defendant:

14 **MR. COREY GORDON**  
15 **BLACKWELL BURKE**  
16 **431 South Seventh Street**  
17 **Minneapolis, MN 55415**

18 **MS. KATHERINE NEWMAN**  
19 **FAEGRE BAKER DANIELS**  
20 **7 Pilgrim Street, London EC4V 6LB**

21 Appearing for the Witness:

22 **MR. ANDREW HEAD**  
23 **MR. BRYAN SHACKLADY**  
24 **FORSTERS**  
25 **31 Hill Street**  
**London W1J 5LS**

1  
2 **W I T N E S S I N D E X**

3 Examination by MR. SACCHET .....239

4 Examination by MR. C. GORDON .....459

5 **E X H I B I T I N D E X**

6 Exhibit 1 Email chain between P. ....263

7 McGovern and M. Albrecht,

8 Bates stamped Albrecht\_0016487

9 Exhibit 2 Email chain between Mark .....287

10 Albrecht, Paul McGovern, Mike

11 Reed and others, dated 30 June

12 to 3 July, 2010

13 Exhibit 3 Forced Air Warming .....289

14 Demonstration DVD

15 Exhibit 4 CDC document entitled .....298

16 "Healthcare Infection Control

17 Practices Advisory Committee

18 Record of the Proceedings",

19 dated November 5-6, 2015,

20 previously marked as Exhibit

21 208, Bates stamped

22 3MBH01344612-01344685

23 Exhibit 5 Document entitled .....306

24 "Forced Air Warming (FAW) and

25 Surgical Site Contamination

First Draft" dated 27/9/09

Exhibit 6 Document entitled "Do .....308

Forced Air Warming Devices

Increase Bacterial

Contamination of Operative

Field? - Simulated

experimental analysis".

Exhibit 7 Email chain dated 8-11 .....309

November, 2009, subject line:

"FAW"

Exhibit 8 Document Bates stamped .....316

3MBH00107863-00107870

1 Exhibit 9 Document entitled "Do .....324

2 Forced Air Warming Devices

3 Increase Bacterial

4 Contamination of Operative

5 Field? - Simulated experiment

6 analysis".

7 Exhibit 10 Email chain between .....336

8 Paul McGovern and Val

9 Edwards-Jones"Re Saturday",

10 dated 26 November - 20

11 December 2009

12 Exhibit 11 Email chain between .....337

13 Paul McGovern, David Leaper,

14 Andrew Sprowson and Thomas

15 Symes, "Prof David Leaper

16 Visit", dated 10 September - 2

17 December 2009

18 Exhibit 12 Email chain between .....342

19 Paul McGovern and Mike Reed,

20 dated 21 February 2010,

21 "Laminar flow tests".

22 Exhibit 13 Article co-published by .....347

23 Paul McGovern and others,

24 entitled "Forced-air warming

25 and ultra-clean ventilation do

not mix." Bates stamped

Belani\_000190-000197

Exhibit 14 Article entitled .....353

"Patient Warming Excess Heat:

The Effects on Orthopedic

Operating Room Ventilatio

Performance", Bates stamped

Belani\_000040-000045

Exhibit 15 Email chain between .....359

Mark Albrecht, Paul McGovern

and others, dated 1 February

2011, "Manuscript with updated

joint infection data covering

an additional 200 or so".

Exhibit 16 Excel spreadsheet with .....365

data analysis

1 Exhibit 17 Email chain between .....372

2 Mark Albrecht, Mike Reed, Paul

3 McGovern and others, dated 18

4 February - 1 March 2011,

5 "Signatures on Transmittal

6 Letter".

Exhibit 18 Email chain between .....373

7 Paul McGovern and Mark

8 Albrecht, dated 19 May - 23

9 May, 2011, "Fwd: JBJS [BR] log

10 No. 27124 - Invitation to

11 resubmit

Exhibit 19 Email chain "Re .....382

12 McGovern" between Robin

13 Humble, Scott Augustine, Paul

14 McGovern and others plus

15 attachment entitled "Observed

16 reduction in periprosthetic

17 joint infections: Antibiotics

18 or warming technique?", dated

19 25 March - 17 June 2016.

Exhibit 20 Journal of Bone and .....391

20 Joint Surgery document

21 entitled "Wound Complications

22 Following Rivaroxaban

23 Administration".

Exhibit 21 Paper entitled "Return .....396

24 to theatre following total hip

25 and knee replacement, before

and after the introduction of

rivaroxaban".

Exhibit 22 Journal of .....403

20 Tissueviability paper entitled

21 "A prospective randomised

22 study comparing the jubilee

23 dressing method to a standard

24 adhesive dressing for total

25 hip and knee replacements",

authored by Neil G. Burke and

others.

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1 Exhibit 23 Email chain between .....410  
 2 Mark Albrecht and Mike Reed,  
 3 "Full workup of stats you  
 4 requested", dated 29 November,  
 5 2011.

6 Exhibit 24 Email from Mark .....416  
 7 Albrecht to Scott Augustine,  
 8 with attachment, dated  
 9 11/22/2015, Bates stamped  
 10 Albrecht\_0002079-0002086

11 Exhibit 25 Anesthesia & Analgesia .....445  
 12 document entitled "Patient  
 13 Warning Excess Heat: Effects  
 14 on OR Ventilation Performance  
 15 During Total Knee  
 16 Replacement", Bates stamped  
 17 Belani\_000002-000039

18 Exhibit 26 Email from Mark .....454  
 19 Albrecht to Paul McGovern and  
 20 others, "Fwd: A&A Decision for  
 21 MS#: AA-D-11-01334", dated 25  
 22 October 2011

23 Exhibit 27 Email chain between .....455  
 24 Mark Albrecht, Mike Reed and  
 25 others, "Fwd: A&A DEcision for  
 MS#: AA-D-11-01334R1", dated  
 11 January 2012.

Exhibit 28 Spreadsheet, Bates .....461  
 stamped  
 AUGUSTINE\_0005193-0005487

Exhibit 29 Printout of spreadsheet .....463  
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Exhibit 30 Screenshots of FAW v .....500  
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# PROCEEDINGS

THE VIDEOGRAPHER: This is Day 2 of the deposition  
 of Dr. Paul McGovern. The deposition started yesterday  
 4 January, today is 5 January 2017, and it is 9:24 a.m.  
 This is the beginning of DVD 1 in volume 2 of Dr. McGovern's  
 deposition. Everybody who was in the room yesterday is here  
 today.

Can I remind the witness he was sworn in  
 yesterday and is still under oath. Can you --

THE WITNESS: Yes.

THE VIDEOGRAPHER: You're on the record, counsel.  
 It is 25 past 9.

EXAMINATION BY MR. SACCHET:

BY MR. SACCHET:

Q. Good morning, Dr. McGovern.

A. Good morning.

Q. As I mentioned yesterday, my name is Mr. Sacchet,  
 and I represent the plaintiffs 3M. Yesterday my learned  
 friend on the other side reviewed some of the ground rules  
 for the deposition. I'm going to go through few more today,  
 just to make sure we're on the same page with respect to the  
 procedures for our conversation. As you know, I'll be  
 asking you questions under oath and you'll be responding to  
 them. If at any time you don't understand a question or if

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you don't hear the question, please let me know, okay?

A. Yes.

Q. As was mentioned yesterday, it's best for the  
 record and the court reporter, if I ask a question, that you  
 let me finish asking the question before you answer, and  
 I'll do the same with respect to you in refraining from  
 asking a question before you've finished your answer.  
 Please provide audible "Yes" or "No" answers with respect to  
 the questions as opposed to a nodding or shaking of the  
 head. Is that agreeable?

A. Yes.

Q. And if at any time you need a break, just let me  
 know, and I'll find an appropriate spot to pause.

A. Sure.

Q. Before we jump into your background, with respect  
 to your educational and professional history, just a few  
 preliminary items. You've never met me before, have you?

A. Not before yesterday, no.

Q. And prior to yesterday, you'd never spoken to me  
 before, be it via e-mail or phone?

A. That is correct.

Q. You've never spoken to any members of the  
 plaintiff's counsel in this matter, have you?

A. That is correct.

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Q. Have you ever spoken to anyone on the side of the  
 defense, prior to yesterday?

A. I'd received communications from various people on  
 the side of the defense. I have only communicated with them  
 through my lawyers.

Q. Okay. Do you recall who those individuals were  
 that attended the --

A. Stephen Llewellyn, from Faeger Baker Daniels.  
 I received a LinkedIn message from a lawyer in the United  
 States, but I don't remember their name.

Q. Do you recall the content of the message?

A. It was similar to the initial contact from Stephen  
 Llewellyn, saying that 3M would like to depose me, and  
 asking me to get back in touch to arrange that.

Q. And did you get back in touch to arrange that?

A. I did not reply to the LinkedIn message at all, and  
 I replied to Stephen Llewellyn through my lawyers when  
 I arranged legal representation.

Q. Okay. So other than contact via your attorney,  
 you've had no personal contact with anyone on the other  
 side?

A. That is correct.

Q. I know you spoke a little bit yesterday about your  
 background as well, and I'm going to review some of that

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Q. If you could please turn to internal page 409, the last paragraph. The last full paragraph, I should say, in the right-hand column. The sentence states:

"These concerns are most relevant for smaller airborne particles, less than or equal to 10 microns, such as free-floating bacteria and skin cell fragments, having similar airborne characteristics to the neutrally buoyant detergent bubbles studied ..."

Do you see that?

A. I do see that.

Q. This paper was authored by you and others; correct?

A. Correct.

Q. Do you stand by that statement?

A. That statement is reasonable me. It does not have a reference for the relationship between free-floating bacteria, skin cell fragments and helium bubbles having similar airborne characteristics. I believe that to be the case, but it would be preferable, in my opinion, for that statement to be referenced to a peer-reviewed paper. And although I believe that to be the case, I could not say that that is fact without further evidence.

Q. This paper, namely Patient Warming Excess Heat by you and Mr. Belani and others, was peer-reviewed; correct?

A. It was peer-reviewed, yes.

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Q. It was published in Anesthesia & Analgesia; correct?

A. Analgesia, yes.

Q. So had this statement been of great concern to the editors, they would have asked for a revision of that statement; correct?

A. I think that would probably -- (overspeaking) -- (Reporter clarification.)

MR. C. GORDON: The objection again? Both form and lack of foundation.

A. Could you just repeat the question, please?

BY MR. SACCHET:

Q. Sure. Had there been a great issue with this particular statement, the editors may have required you to alter it in some way; correct?

A. The action of the editors would be their decision, but I would expect that a statement which, were I reviewing a paper, if I had identified a statement which I felt to be questionable, I would have challenged it and expected it to be justified or removed.

Q. And in other papers you have co-authored and participated in the peer-review process, editors have asked for revisions of particular sentences?

A. Yes, that's absolutely true.

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Q. And this particular sentence was published in final form, as it says in this paper?

A. This sentence, as part of this paper, was peer-reviewed and approved for publication.

Q. Do you have any reason to doubt the bubble count results of the McGovern paper?

A. I do not.

Q. You did not receive any compensation from Augustine Biomedical & Design, or any of its predecessor entities, with respect to conducting this study?

A. No.

Q. In fact, it cost you a sum of money to conduct this study?

A. Overall, this study -- the conducting of this study involved me working at weekends in my own hours, traveling to and from the hospital on my own time, and at my own expense. There were -- some equipment was purchased, and at the time, I received expenses for that equipment to be purchased, I did -- but I received that from the healthcare trust that I worked for. I did not receive any money directly from Augustine at this time for this paper, to my knowledge.

Q. The fact that Mr. Albrecht may have been employed by Augustine Biomedical & Design, or any of its predecessor

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entities at this time, had no influence on your participation in this study?

A. It had no influence on my participation in this study.

Q. Let's now move to the observational aspect of the study. Were you involved in the collection of any of the data with respect to the observational information present in this study?

A. I was not.

Q. Were you aware that other co-authors of this study, such as Mr. Reed, made great efforts to collect as much data as possible before publishing the paper?

A. Yes.

MR. C. GORDON: Object to the form of the question.

BY MR. SACCHET:

Q. For example, in prior manuscripts of this study, one of which you looked at yesterday, the period of time in which infection rates were analyzed was from September 2008 to September 2010, a two-year period; correct?

A. Yes.

Q. Whereas the published paper, as shown in figure 7 of the study, the date range was July 2008 to January 2011; correct?